IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8459 of 2002
With
SPECIAL CIVIL APPLICATION No. 8850 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DANAWADA GRAM PANCHAYAT & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

SCA No.8459 of 2002

MR TUSHAR MEHTA for Petitioner(s) : 1 - 2.
MR SIRAJ GORI AGP for Respondent(s) : 1,
MS SEJAL K MANDAVIA for Respondent(s) : 2 – 3.

SCA No.8850 of 2002

MR BM MANSUKIA for Petitioner(s) : 1 - 2.
MR SIRAJ GORI AGP for Respondent(s) : 1,
MS SEJAL K MANDAVIA for Respondent(s) : 2 – 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI
Date : 22/11/2005

ORAL JUDGMENT

1. In these petitions since similar question of law and facts are involved they have been heard together and are

being disposed of by this common order.

2. In Special Civil Application No. 8459/02 petitioners who are Danawada Gram Panchayat and its office bearers have challenged the order dated 23rd July, 2002 passed by the Development Commissioner, Govt. of Gujarat, Gandhinagar. By the impugned order, Development Commissioner was pleased to dissolve Danawada Gram Panchayat in exercise of powers u/s 253 of Gujarat Panchayats Act, 1993 (herein after to be referred to as the said Act.)

2.1 Danawada Gram Panchayat was constituted in January, 2002. It consists of eight members. Since budget of the Gram Panchayat was not passed by the Panchayat before 31st March, 2002 a show cause notice dated 20th May, 2002 came to be issued by the Development Commissioner requiring the members of the panchayat to show cause why the panchayat should not be dissolved in exercise of powers u/s 253 of the said Act. In the show cause notice, it was indicated that the budget for the year 2002-2003 was required to be approved by the panchayat before 31st March, 2002. No meeting was called for approval of the budget before 31st March, 2002 and, therefore, budget

could not be passed before the said date. Thereafter on 17/4/2002 a meeting was held in which seven members remained present and adopted the budget. It was, therefore, stated that reply should be filed before 10th June, 2002 why powers u/s 253 of the said Act should not be exercised.

2.2 A detailed representation was made by the petitioner no.1 by communication dated 29/5/2002. In the representation, it was contended inter alia that on 22/2/2002 a meeting was held in which unanimously the budget proposals were given primary sanction and the budget should be deemed to be adopted on 22/2/2002. Thereafter on account of prior commitments of the Talati-cum-Mantri of the village, meeting could not be convened to give final sanction to the budget and the procedure could not be completed before 31st March, 2002. However, on 17th April, 2002 by unanimous resolution of seven members present, the budget was finally sanctioned. It is contended that the panchayat is capable of performing all its duties and the show cause notice should therefore, be dropped.

2.3 The Development Commissioner however did not accept

the explanation of the petitioners. By impugned order dated 23rd July, 2002, the panchayat was dissolved. In the said order it was recorded that the budget was passed on 17th April, 2002, which establishes that till 31st March the budget was not approved. It was observed that as per Sub Section (3) of Section 116 of the said Act annual budget of the panchayat is to be passed before 31st March of the relevant year which requirement is mandatory in nature. To pass budget before 31st March is mandatory. It was observed that to pass the budget and to do so before 31st March are both mandatory requirements. It was observed that for having failed to comply with this mandatory requirement the panchayat has to suffer the consequences. It was observed that in Sub Section 4 of Section 116 of the said Act, it is provided that failure on the part of the panchayat to pass the budget before 31st March implies that the panchayat has failed and is incapable to discharge its duties and, therefore, procedure u/s 253 of the said Act is required to be carried out. In fact it was observed, that in view of the breach of provisions of Section 116(3) of the said Act and in view of the failure on the part of the panchayat to pass the budget before 31st March there is no alternative but to dissolve the panchayat. Eventually,

therefore, the said authority was pleased to exercise powers u/s 253 of the said Act and dissolved the panchayat.

3. Facts leading to Special Civil Application No. 8850 of 2002 are that the petitioners herein who are members of Godavari Gram Panchayat have challenged an order dated 23rd July, 2002 passed by the Development Commissioner by which exercise of powers u/s 253 of the said Act, the authority was pleased to dissolve the gram panchayat.

4. Gram Panchayat was constituted in January, 2002. Since budget for the year 2002-2003 was not passed by the gram panchayat, a show cause notice dated 22nd May, 2002 came to be issued by the Development Commissioner calling upon the Gram Panchayat to show cause why action should not be taken for dissolution of the panchayat in exercise of powers u/s 253 of the said Act. In the show cause notice, it was stated inter alia that the panchayat was required to pass the budget before 31st March, 2002, meeting was not called before the said date and the budget was passed on 17/4/2002.

4.1 A reply was filed contending inter alia that on

24/4/2002 resolution was passed which should be treated to have adopted the budget. Again by non-convening the meeting by Talati-cum-Mantri before 31st March, 2002 the budget could not be finally approved. However subsequently on 17th April, 2002 budget was adopted unanimously. It was contended that the panchayat is not incapable of discharging its duties and notice should, therefore, be dropped.

4.2 Development Commissioner however passed an order on 23rd July, 2002 dissolving the gram panchayat. In the impugned order, like in the earlier case, the Development Commissioner was pleased to observe that passing of the budget before 31st March is a mandatory requirement of law, that the panchayat having failed to fulfill this mandatory requirement must suffer the consequences, that in view of the provisions of Section 116(3) of the said Act and in view of the failure on the part of the petitioners to pass the budget before 31st March, there is no alternative but to dissolve the panchayat. Eventually, therefore, an order came to be passed dissolving the panchayat in exercise of powers u/s 253 of the said Act.

5. Learned advocates appearing for the petitioners in respective petitions have urged that the orders passed by the Development Commissioner are illegal and unlawful. It was contended that the Development Commissioner gravely erred in observing that the requirement of passing the budget before 31st March, is a mandatory requirement and that in the event of a panchayat failing to adhere to such a requirement, only alternative available is to dissolve the panchayat.

5.1 Reliance was placed on the Division Bench decision in the case of **Nathalal Manilal Patel & Anr. v. A.R. Banerjee, Development Commissioner reported in 1991(2) GLR page 811**. In the said decision Division Bench was pleased to come to the conclusion that the requirement or approving the budget estimate before 31st March, is a directory requirement and not mandatory. It was also observed that failure to approve the estimate by the said date would not necessarily lead to the conclusion that the panchayat was incompetent to perform its functions so as to necessitate action u/s 297(1) of the Gujarat Panchayats Act, 1961.

5.2 Reliance was also placed on the decision of this

Court in the case of **Thasara Village Panchayat v. P.D.Vaghela reported in 2003(1) GLR page 676**. In the said decision learned Single Judge was pleased to come to the conclusion that the requirement of approving the budget before 31st March of the accounting year as contained u/s 116 of the said Act is directory in nature and as per the provisions of Sub Section (4) of Section 116 of the said Act though it may be open for the Government to form an opinion that panchayat is incompetent to perform its duties imposed on it or having been entrusted to it under the said Act, it is not as if that the moment budget is not passed, the panchayat must be dissolved. In a given case while forming an opinion u/s 116(4), the Government may hold in favour of the panchayat if there are justifiable reasons given by the panchayat for not passing such a budget.

5.3 Reliance was also placed on the decision of learned Single Judge in the case of **Shrimati Shantaben Popatbhai Makwana & Anr. vs. Development Commissioner & Anr. Reported in 2003(1) GLH page 239**, wherein the learned Single Judge was pleased to set aside the order of the Development Commissioner dissolving the panchayat wherein the budget could not be passed since budget estimate was

not prepared by the administrator. It was observed that the blame for not passing the budget should not have been thrown on panchayat.

6. On the other hand learned AGP Shri Gori appearing for the State Government as well as Ms. Mandavia appearing for the panchayat sought to support the orders under challenge. It was contended that the Development Commissioner having applied its mind to the facts of the case and having passed the order in exercise of statutory powers, the same should not be interfered with.

7. Having considered the submissions made on behalf of the rival parties, I find that the orders passed by the Development Commissioner cannot be sustained for variety of reasons. At the outset it may be reiterated that the entire tenor of both the orders passed by the Development Commissioner is that the requirement by approving the budget before 31st March, is mandatory in nature and the movement it is found that such requirement is not fulfilled the authority has no option but to dissolve the panchayat. Section 116 of the said Act reads as follows:

> 116.(1) Every village panchayat shall have prepared annually on or before the 15th December of the current year of such date not later than 31st December of the current year as may be approved by

the taluka panchayat in such form and manner as may be prescribed in this behalf a budget estimate of its income and expenditure for the next year and forward the budget estimate to the taluka panchayat on or before-

(a) the 31st December of the current year where the budget estimate is prepared on or before the 15th December of the Current year, or

(b) the 15th January of the current year where the budget estimate is prepared on or before the approved ate;

Provided that the budget estimate shall be so prepared that at the end of the year the panchayat shall have at its credit a balance of not less than such minimum amount as may be prescribed in that behalf.

(2)The taluka panchayat shall scrutinize the budget estimates and return to the panchayat within two months of its receipt with such observations and recommendations as it may make in respect of the budget estimate.

(3) The panchayat shall thereupon approve the budget estimate on or before 31st March of the current year with such modifications as ti may think fit having regard to the observations and recommendations made by the taluka panchayat under sub-section (2).

(4)Where any village panchayat has failed to comply with the provisions of sub-section (3), it shall be lawful for the State Government to form an opinion that the panchayat is incompetent to perform the duties imposed on it or functions entrusted to it under the provisions of this Act.

Section 253 of the said Act reads as follows:

253.(1) If, in the opinion of the State Government, a panchayat exceeds or abuses its powers or is incompetent to perform or makes persistent default in the performance of the duties imposed on it or functions entrusted to it under any provision of this Act or by or under any other law for the

time being in force, or fails to obey an order made under this Act by the panchayat superior thereto or by the State Government or any officer authorised by it, under this Act or persistently disobeys any of such orders, the State Government may, after consultation with the district panchayat in the case of a panchayat subordinate to it and after giving the panchayat an opportunity or rendering an explanation, by order in the Official Gazette--

(i)dissolve such panchayat, or

(ii)supersede such panchayat for the period specified in the order:
Provided that such period shall not be longer than six months or the residual period of duration of such panchayat whichever is less:

Provided further that the State Government may subject to the preceding proviso from time to time after making such inquiry as it may consider necessary by an order published in the Official Gazette extend the period of supersession of such panchayat until such date as may be specified in the order or by like order curtail the period of supersession.

(2)When a panchayat is dissolved or superseded, all members of the panchayat shall from the date specified in the order, vacate their office as such members.

(3)When the panchayat is dissolved or superseded, it shall be reconstituted , in the manner provided in this Act,

(4)If a panchayat is dissolved or superseded-
(a) all the powers and duties of the panchayat shall during the period of dissolution or supersession, as the case may be exercised and performed by such person or persons as the State Government may, from time to time appoint in that behalf, and

(b) all property vested in the panchayat shall during the period of dissolution or supersession, as the case may be, vest in the State Government; and

> (c) on the dissolution, or, as the case may be, on the expiry of the period of supersession, the panchayat shall be reconstituted in the manner provided in this Act, and the persons vacating office shall be eligible for re-election.

8. From the provisions of Section 253, it can be seen that even in a case where in the opinion of the State Government the panchayat is incompetent to perform its duties or makes persistent default, officer authorised by the State Government after giving an opportunity of rendering an explanation to the panchayat may either dissolve such panchayat or supersede such panchayat for the period specified in the year provided that such period shall not be longer than six months or the residual period of duration of such panchayat whichever is less. The assertion of the Development Commissioner that the moment it is found that the panchayat has failed to approve the budget before 31st March, there is no alternative but to dissolve panchayat is not borne out from the statutory provisions of Section 253(1) of the said Act. Legislature has invested discretion in favour of the competent authority even when it is found that the panchayat is incompetent to perform or makes persistent default in the performance of duties imposed on it either to dissolve panchayat altogether or be superseded for a limited period which shall not exceed six months.

8.1 In the present case however, the issue does not rest here. Learned Single Judge of this Court in the case of Thasara Village Panchayat (supra) while interpreting Sections 116 and 253 of the said Act basing reliance on the decision of this Court in the case of Nathalal Manilal Patel (supra) held that in case panchayat fails to pass the budget within the stipulated time i.e. 31st March of the year the same will not ipso facto result in dissolution or supersession of the panchayat and discretion can be exercised by the State Government not to effect dissolution or supersession. It was observed that though by virtue of Sub Section 4 of Section 116, the Government is entitled to form an opinion about incompetence of a panchayat in case panchayat fails to pass budget within the stipulated time which may be one of the grounds available to the Government for taking action u/s 253, however, it is always open for the State Government before forming such an opinion whether any justifiable grounds were available for the panchayat for not passing the budget within the time permitted. It was further observed that the moment the budget is not passed, it is not that the panchayat must be dissolved and in a given case the Government may form an opinion in

favour of the panchayat if there are justifiable reasons given by the panchayat for not passing such a budget. It was further observed that there would be no automatic dissolution of the panchayat and it is open for the Government to consider whether panchayat is required to be dissolved or not for not being able to pass the budget within the stipulated time.

9. Apparently, the orders were passed by the Development Commissioner without the aid of the decision of this Court in the case of Thasara Village Panchayat(supra). The Development Commissioner has, therefore, come to the conclusion which are contrary to the ratio laid down by this Court in the above mentioned judgment. The Development Commissioner, therefore, erred in law in holding that since requirement of passing the budget before 31st March, is mandatory in nature and since Sub Section 4 of Section 116 permits the Government to form an opinion of incompetence of panchayat in performance of its duties, there is no alternative but to dissolve the panchayat in exercise of powers u/s 253 of the said Act. I find that the Development Commissioner in view of the above observations committed a legal error. I further find that since the Development

Commissioner found that there is no alternative but to pass the order by dissolution did not consider the defence of the panchayat for not being able to pass the budget before the final dead line. The orders under challenge do suffer from material irregularities and must be quashed.

10. Whether the explanation rendered by the respective panchayats for not being able to pass the budget within the time period or before 31st March, 2002, and that the panchayats had undertaken exercise which would amount to having adopted the budget are the issues not considered by the Development Commissioner. The explanation of the panchayats in this regard should be examined by the Development Commissioner and pass fresh orders in accordance with law bearing in mind the observations made by this Court in various decisions cited by the petitioners and noted herein above.

11. In the result impugned orders both dated 23rd July, 2002 passed by the Development Commissioner are quashed and set aside. The Gram Panchayats shall be restored in its original capacity by restoring charge thereof which shall be done within two weeks from the date of receipt

of a copy of this order. The Development Commissioner shall proceed further from the stage of the show cause notice issued against the gram panchayat. It will not be necessary to separately once again serve such notice on the gram panchayat and it will be open for the panchayat to make further representation if so desired which shall be made within a period of four weeks from today. The Development Commissioner shall pass fresh orders in accordance with law bearing in mind the observations made in the present decision after considering the defence of the petitioners which is already on record and which may be placed hereafter as permitted by this Court. With these directions, the petitions are allowed to the above extent and disposed of accordingly. Rule is made absolute with no order as to costs.

12. I am informed by learned advocates in both the petitions that pursuant to the dissolution of the respective panchayats fresh elections have not been held to install newly elected body of panchayats and currently, the affairs of the gram panchayats are looked after by the administrator appointed by the State Government.

(Akil Kureshi, J.)

smita/